



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the application of:)
JOSEPH A. WELZEN) Group 3632
)
Serial No. 10/738,937) Examiner: Ramirez, Ramon
)
Filed: May 18, 2004)
)
For: ANGULARLY ADJUSTABLE)
)
TREE STAND)
)

**RESPONSE TO FIRST OFFICE ACTION AND AMENDMENT OF ORIGINAL
APPLICATION**

The Honorable Commissioner of
Patents & Trademarks
Washington, D.C. 20231

Sir:

INTRODUCTION

The Examiner has rejected claims 1-17 in a first Office Action dated September 28, 2004 in a non-final action. The Examiner has objected to the following:

A. Information Disclosure Statement (IDS)

The Examiner states that a listing of references in the specification is not a proper information disclosure statement. The Examiner goes on to state that unless the references have been "...submitted in a separate paper." or cited by the Examiner on form PTO-892, the have not been considered by the Examiner.

B. Drawings

The Examiner objects to the drawings because Figure 2 should be bracketed as per Rule 1.84 (h)(1).

The Examiner has required Corrected drawing sheets in compliance with 37 CFR 1.121(d) to avoid abandonment of the application. The Examiner further requires that the replacement drawing sheet should include all of the figures appearing on the immediate prior version of the (drawing) sheet, even if only one figure is being amended.

The figure or figure number of the amended drawing should not be labeled as “amended”. If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet and, if necessary, the remaining figures renumbered and appropriate changes made to the brief description of the several views of the drawings. Additional replacement sheets may be necessary to ~~show~~ the renumbering of the remaining figures.

show

The replacement sheet should be labeled “Replacement Sheet” in the page header as per 37 CFR 1.84(c) so as not to obstruct any portion of the drawing figures.

C. In the Specification

1. **Abstract-** The Examiner has objected to the use of the clause “invention” in the abstract, as it is not allowed in the abstract.
2. **Alterations-** The application has been objected to because of alterations which have not been initialed and/or dated as required by 37 CFR 1.52(c).
3. **Oath/Declaration-** A properly executed oath or declaration which complies with 37 CFR 1.67(a) and identifies the application by application number and filing date is required.
4. **Informalities-**
 - a. Page 4- The reference to the patent to Welzen must include the patent number.
 - b. Page 9, line 11-“.032” requires a unit of measure.

D. Claim rejections under 35 USC §112, Second Paragraph

The Examiner states that claims 1-17 are rejected for failing to define the invention in the manner required by 35 USC 112, second paragraph.

The Examiner says that the claims are narrative in form and replete with indefinite and functional or operational language. The Examiner requires that the structure that makes up the device must be clearly and positively specified. Also, the claims must be in one sentence form only.

The Examiner further states that these claims are mixing a method of using (the device) with the device's structure, which is not permitted by the Office.

The Examiner comments that the claims are confusing since it is not clear if the tree is part of the claimed combination or not. The Examiner says that the preamble recites a subcombination of a stand for use with a tree, but in line 3, the combination of a stand with a tree is claimed. The Examiner opines that for this Office Action, the claims would be considered as subcombination claims, i.e. the tree is not considered to be part of the combination.

Further, regarding Claim 1, the word "means" is preceded by the word(s)"...of retaining..." in an attempt to use a "means" clause to recite a claim element for performing a specified function. However, the Examiner declares, since no function is specified by the word(s) preceding "means", it is impossible to determine the equivalents of the element as required by 35 USC 112, sixth paragraph.

E. Claim Rejections under 35 USC § 103 (a)

The Examiner has rejected Claims 1-17 under 35 USC 103(a) as being unpatentable over Welzen (Patent Number 6,010,108) in view of St. George Syms (Patent Number 4,261,138). The Examiner claims that the patent to Welzen discloses all of the elements of the current device except for the cover. The patent to St. George Syms shows another tree holder with a cover (20) to provide protection to an element of the invention.

F. Examiner's Conclusions

The Examiner concludes that the Applicant must review the whole specification, drawings and claims to be sure that each and every element in the specification is shown and labeled in the drawings and that every element recited in the claims is supported by the specification and the drawings.

In addition, the Examiner has made of record but not relied upon the following prior art:

Kalman, et al. (5,507,117); Pastrick (5,707,037); Sofy et al.(6,357,173); and Cone (6,681,519).

AMENDMENTS

In response to the Official Action Dated September 28, 2004, due to the extensive number of amendments required to correct the original application, please cancel the original application and replace the entire application with the newly rewritten application as submitted with this Response to the Office Action. Please notice that no new matter has been added to the original application.

REMARKS

A. Introduction

It is believed that with the complete rewriting of the original application, that the Examiner's objections with regard to the Information disclosure statement, the drawings, the abstract and the specification have been overcome.

A valid, newly drafted Oath/Declaration is accompanying this Response to comply with the Examiner's requirement for a valid Oath/Declaration.

In addition, an Information Disclosure Statement will accompany the rewritten application, as required by the Examiner.

Further, Replacement Drawing Sheet will be submitted with the rewritten application to meet the Examiner's requirement for Replacement Drawing sheets.

The Examiner's requirements in the Abstract and the Informalities (both *supra*) have been corrected in the newly drafted application.

The Examiner's objections on the basis of 35 U.S.C. 112 are believed to be satisfied as the claims have been rewritten to distinctly claim the invention in the manner required by 35 U.S.C. 112, second paragraph.

B. 35 U.S.C. § 103 Objections

This invention, as revealed in the rewritten application, teaches a removable top that can be used by the owner to fill the bowl assembly with water and to drain the bowl assembly when the tree stand assembly is no longer in use.

The cover in the Syms patent uses notches and wedges in order to stabilize and orient the tree when the tree is installed into the stand. The tree, in the Syms patent, is inserted into the central aperture (12). Triangular wedge members (15), that are serrated, bear against the tree and the four rectangular equally spaced recesses (13). A surface (17) of the triangular wedge member (15) bears against the tree, while the serrations lockingly engage the four rectangular equally spaced recesses (13). The surface (17) of the triangular wedge member (15) has a series of groups of four serrations (17) so that the face can engage the trunk of a Christmas tree. (Page 2 lines 38 through 65). The

cover in the Welzen application does not use any triangular members to orient the tree, but does have a downturned flange(31) to position the tree and pot, within the stand, and allow nails to secure the tree to the stand. The nails are not used to orient the tree. The tree stand in the Welzen application uses the upper spherical surface (62) of the base (60) in contact with the lower spherical surface (54) of the bowl (50) as a means to correct the slant of the tree by allowing a sliding motion between the upper spherical surface (62) of the base (60) and the lower spherical surface (54) of the bowl (50). The combination of these elements is not taught in either the Welzen (Patent Number 6,010,108) nor in St. George Syms (Patent Number 4,261,138), nor can they be deduced from a combination of elements from the aforementioned prior art. The cover (7) in the Syms patent additionally has a series of four circular apertures (14) to allow for watering the tree, while the Welzen application does not have this provision.

In addition, the current tree stand assembly has stackable components that allow the unit to be shipped easily, stored easily in a small relative volume and allows the components to be individually replaced, which is also not taught by the earlier Welzen patent (supra) nor the St. George Syms patent (supra).

It is our belief that the current invention is novel and not obvious in light of Welzen in view of St. George Syms.

CONCLUSION

In view of the above, it is submitted that the claims are in condition for allowance. Reconsideration of the rejections and objections is requested Allowance of claims 1 to 16 at an early date is solicited.

Respectfully submitted,

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